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*Chairman*

*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
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## **DECISION**

**MONTAGUE B.P.O. ELKS LODGE #2521  
1 ELKS AVE  
MONTAGUE, MA 01376  
LICENSE#: 073600006  
VIOLATION DATE: 10/06/2016  
HEARD: 07/18/2017**

Montague B.P.O. Elks Lodge #2521 (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, July 18, 2017, regarding alleged violations of:

- 1) 204 CMR 2.05 (1) - Permitting Gambling;
- 2) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 23K § 37 Unlawful conduct or operation of a game or gaming device in violation of chapter;
- 3) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 140 § 177A (6) No person keeping or offering for operation or allowing to be kept or offered for operation any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling.

Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Di Cicco's Report.

The following documents are in evidence:

1. Investigator Di Cicco's Investigative Report;
2. Photos of 5 Electronic Video Gaming Devices;
3. Photo of Currency Receptor on Electronic Video Gaming Device;
4. Photo of Push Buttons on Electronic Video Gaming Device;
5. Photo of Ticket Dispenser on Electronic Video Gaming Device;
6. Photo of 5 Electronic Video Gaming Devices;
7. Photo of "Entertainment Only" sign;
8. Photo of Electronic Video Gaming Device #1, "Fruit Paradise";
9. Photo of Electronic Video Gaming Device #2, "Magic Bomb";
10. Photo of Electronic Video Gaming Device #3, "Queen Bee";
11. Photo of Electronic Video Gaming Device #4, "Cherry Master 21";
12. Photo of Electronic Video Gaming Device #5, "Crazy Bugs";
13. Photo of Money Pouch, Cash, Slips, and Envelope;

14. Photo of 1,000 Point Slip with "250 MC" written on it;
15. Photo of Points Slips from an Electronic Video Gaming Device;
16. Photo of Internal Push Buttons and Meters inside Device #4, Cherry Master 21;
17. Photo of a Diagnostic/Menu Screen of Device #4, Cherry Master 21;
18. Photo of a Diagnostic/Menu Screen of Device #4, Cherry Master 21;
19. Photo of a Diagnostic/Menu Screen of Device #4, Cherry Master 21; and
20. Licensee's Stipulation of Facts.

The Commission took Administrative Notice of the Licensee's Commission files.

There is one (1) audio recording of this hearing.

#### FINDINGS OF FACT

1. On Thursday, October 6, 2016, at approximately 5:00 p.m., Investigators Kujawski, Temple, Velez, and Di Cicco ("Investigators") investigated Montague B.P.O. Elks Lodge #2521 to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and observed five electronic video gaming devices (Fruit Paradise, Magic Bomb, Queen Bee, Cherry Master 21, and Crazy Bugs) in a room near the bar. (Exhibits 2, 8, 9, 10, 11, 12)
3. Investigators observed that the electronic video devices had the following characteristics which, based on their training and experience, indicated these electronic video machines were being used for illegal gambling:
  - The electronic video gaming devices were located in a separate room;
  - The room was marked "for entertainment only";
  - Each device accepted U. S. Currency in bills ranging from \$1, \$5, \$10, \$20;
  - Each device had a "double up" option to win additional credits;
  - Each device had a functional ticket dispenser;
  - Each device had a "knock off" mechanism to reset the credits earned to zero. (Exhibits 3, 4, 5, 6, 7)
4. Investigators identified themselves to the female bartender on duty, Michelle Cloutier and asked about the electronic video devices. Ms. Cloutier informed Investigators that the club made pay outs on the machines and that the money used for the pay outs was kept in a separate envelope within a pouch behind the bar. Cloutier showed the pouch and envelope labeled "Slips" to Investigators. Investigators determined the envelope contained \$626 dollars in U.S. Currency. (Exhibit 13)
5. Investigators observed a printed slip indicating 1,000 points, with handwritten notation "250 MC" in the envelope. Ms. Cloutier said the notation indicated a payout of \$250.00. (Exhibit 14)
6. Investigators inserted one U.S. dollar into each electronic video gaming devices and then heard a ticking noise, which based on their training and experience, they know to be consistent with internal dial meters inside the device, used to track activity.

7. Each of the five electronic video gaming devices displayed four credits, which indicated that the value of one credit or point was twenty-five cents. The Crazy Bugs game required a minimum of \$2.00 (8 credits) to play.
8. Investigators then played the games which allowed a player to bet in small or large quantity, and to double the bet.
9. When finished playing, Investigators pressed a "ticket" button, which delivered a printed slip indicating the number of points remaining. Investigators printed tickets for each of the five machines. (Exhibit 15)
10. Pressing the "ticket" button also reset the credits to zero. The "ticket" button acted as a "knock off" mechanism for each device.
11. Ms. Cloutier opened each of the electronic video gaming devices so Investigators could conduct an audit of them. Inside Cherry Master 21, Investigators observed two dial meters and two push buttons. (Exhibit 16)
12. Using the internal push buttons, Investigators opened the options menus of the device. These menus displayed the level of difficulty to which the machine was set, activation of the double up feature, and other settings. (Exhibit 17, 18, 19)
13. Investigators examined the other electronic video gaming devices and observed each had internal meters marked as IN and OUT.
14. For the gaming device Fruit Paradise, the IN meter read 861315, and the OUT meter read 647454. When Investigators inserted \$1.00 in U.S. Currency into the device, the screen displayed four credits, made a ticking noise, and then the IN meter showed 861319. Investigators then used the "knock off / ticket" button. The screen display reset the credits to zero, the device printed a ticket indicating 4 points, and the OUT meter showed 647458.
15. Investigators examined each electronic video gaming device and found varying amounts of U.S. Currency in them. Fruit Paradise contained \$40.00; Queen Bee contained \$60.00; and Crazy Bugs contained \$40.00.
16. Investigators informed Ms. Cloutier of the violation and that a report would be submitted to the Chief Investigator for review.
17. Administrative review of the Licensee's files reveals the Licensee has been in business since 1975 with no previous violations.

### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (1) - Permitting Gambling;
- 2) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 23K § 37 Unlawful conduct or operation of a game or gaming device in violation of chapter;
- 3) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 140 § 177A (6) No person keeping or offering for operation or allowing to be kept or offered for operation any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling.


Therefore, the Commission suspends the license for five (5) days of which five (5) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. In addition, the Licensee must not possess in or on the licensed premises any automatic amusement devices or video poker machines.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: July 21, 2017

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Joseph Di Cicco, Investigator  
J. Kujawski, C. Temple, N. Velez, Investigators  
Jim Dolan, Esq. via facsimile 413-863-0230  
Administration, File